IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

CONTEMPT PETITION NO. 171 OF 1989

Ramakant Singh Darabarasingh .. Petitioner

vs

1. Chunilal Mathuraprasad Bania & ors ..Respts

..

CORAM : B.H.MARLAPALLE, J

DATE: 28th September, 2005

P.C.

1. In this Contempt Petition it has been alleged that the respondent nos. 1 to 4 willfully committed breach of the judgment and order dated 11th April, 1986 and/or breach of the undertaking dated 21st September, 1971. Though Rule was granted in this Contempt Petition as early as on 8th September, 1989, the respondent nos. 1 to 4 have not been served, as the notice issued on the

Rule came to the returned to the registry of this Court with the remark that the respondent no. 3 was not found at the given address when the notice was sought to be served. By an order dated 25th April, 1990 this Court granted time up to 29th June 1990 to take steps for service of the fresh notice and even thereafter the respondent no.4 was served but the notice could not be served on the respondent nos. 1 to 3.

2. Even otherwise the implementation of the decree could be sought by filing the execution proceedings before the appropriate court and when such alternative remedy is available a Contempt Petition cannot be entertained. The decree was passed on 11th April, 1989 whereas Contempt Petition has been moved before this Court on or about 5th September, 1989 i.e. after 3 years. It appears that in S.L.P. Nos.5174 and 5175 of 1989 the Supreme Court passed an order on 20th April, 1989 and rejected the Special Leave Petitions. It is further averred that the Supreme Court had directed not to execute the decree till 30th June, 1989 pending usual undertaking of the respondent nos.1 and 2 and being filed in the Supreme Court within three weeks from

20th April, 1989. It is alleged that this was not done. Even if that be so, cognizance of contempt cannot be taken by this court. It also appears that the petitioner approached the City Civil Court for execution of the decree and a Chamber Summons was taken out for a declaration that the decree dated 11th April, 1989 in Suit No. 187 of 1967 was not binding on him. The said Chamber Summons was dismissed on 6th July 1991 even then nothing prevented the petitioner from proceeding with the execution proceedings from initiating/proceeding with the execution notice.

3. Contempt Petition is therefore dismissed.

(B.H.Marlapalle, J)